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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 23, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawai'i

Consent to Assign and Consent to Change the Character of Use, General Lease No. S-3606, Hilo Kala, Inc., Assignor, to The Food Basket Inc., Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-2-50:96.

APPLICANT:

Hilo Kala, Inc., as Assignor, to The Food Basket Inc., a Hawaii Non-profit corporation, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Lot 28, Kanoiehua Industrial Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-2-50:96, as shown on the attached map labeled Exhibit A.

AREA:

15,000 square feet, more or less..

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

For the first 5 years, for the same business use in which the Lessee was engaged at the time of the natural disaster; provided that the Lessee may use for uses other than wholesaling and retailing of truck and trailer parts and body manufacturing with the prior written consent of the Board.

TERM OF LEASE:

55 years, commencing on January 16, 1961 and expiring on January 15, 2016.

ANNUAL RENTAL:

\$17,100.00 due in semi-annual payments..

CONSIDERATION:

\$ 50,000.00.

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

DCCA VERIFICATION:

ASSIGNOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

ASSIGNEE:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

REMARKS:

On January 13, 1961 General Lease No. S-3606 was issued to Hilo Equipment and Manufacturing Co., Ltd. as a result of Act 4, First Special Session, 1960 which authorized the leasing or leasing with option to purchase of public lands to victims of natural disaster through direct negotiation for other than residential or agricultural purposes.

At its meeting of May 27, 1961, under Agenda Items F-1-c, the Board of Land and Natural Resources approved the assignment of GL S-3606 from Honolulu Iron Works Company, successor in interest to Hilo Equipment and Manufacturing Co., Ltd., Assignor, to Hilo Kala,

Inc., Assignee. On September 23, 1966, the Chairperson consented to the sublease of a portion of the property to Truck & Trailer Service, Inc.

The Lessee has been utilizing the property for the same purpose for which the lease was issued (wholesaling and retailing of truck and trailer parts and body manufacturing).

Paragraph 21 of the lease authorizes the Board to allow a change in character of use other than for what it was originally leased and is described as follows:

21. Character of use. That the Lessee shall be required to use the leased land for the first five (5) years of the term of the lease for the same business use or undertaking in which the Lessee was engaged at the time of the natural disaster or a use designated by the Board; provided, however, that the Lessee may devote or place said demised premises to a use or uses other than wholesaling and retailing of truck and trailer parts and body manufacturing in character, with the prior written consent of the Board, which consent shall not be unreasonably or arbitrarily withheld; provided, further, that should the Lessor consent to a change in the character of the use, it shall be upon such terms and conditions as set by the Lessor. The Board before acting upon a request by the Lessee for a change in use shall consult with the Lessee and any assignee, mortgagee and sublessee if any. The Board shall also consider market and economic conditions affecting said change.

Staff recommends the Board consent to the change in the character of use from 'truck and trailer parts and body manufacturing' to the proposed uses allowed under the County of Hawaii zoning code, ML-20, limited industrial. Staff believes the change in use will benefit the State by allowing a wider range of use and thereby making the property more appealing for future leasing.

Staff is therefore recommending that the Board consent to the change in the character of use from truck and trailer parts and body manufacturing business to the allowable uses under the current County of Hawaii zoning code, ML-20, limited industrial use.

The Lessee, Hilo Kala, Inc. has decided to close their business. They wish to sell the leasehold property to The Food Basket Inc. The Lessee is current with the terms and conditions of the lease with regards to rent, insurance and performance bond.

The Assignee, The Food Basket Inc. is an island wide, supplemental food network that collects and distributes nutritious, high quality food to low income households, the working poor, the disabled, the ill, senior citizens, children programs and other charitable organizations that serve this population. Supplemental food is provided regardless of religious beliefs, gender or ethnicity. They plan to utilize the subject property for warehouse, storage and distribution purposes. This use is consistent with the current county zoning, industrial use.

The Assignee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. The Assignee is also aware and understands that the lease will expire on January 15, 2016 and currently, it cannot be extended beyond the 55-year term.¹

The last rental reopening occurred on January 16, 2011. This rent was accepted by the Assignor and is the last rental reopening for this lease.

RECOMMENDATION:

That the Board consent to the assignment of General Lease No. S-3606 from Hilo Kala, Inc., as Assignor, to The Food Basket Inc., as Assignee, subject to the following:

1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
2. Consent to the change in the character of use from truck and trailer parts and body manufacturing business to the current allowable county zoning code, ML-20, limited industrial use;
3. Review and approval by the Department of the Attorney General; and
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

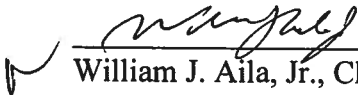
Respectfully Submitted,



Gordon C. Heit
Land Agent



APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

¹ HB 331 would allow for a 10-year extension under some circumstances. The bill was transmitted to the Governor on May 6, 2011.

